

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Complaint No. R4-2008-0160-M
)	Mandatory Minimum Penalty
)	for
Magic Gas & Auto Service)	Violation of California Water Code § 13376
)	and
Los Angeles, CA 90026)	Order No. R4-2002-0125
		(NPDES No. CAG834001)

This Complaint to assess the mandatory minimum penalty pursuant to California Water Code (CWC) § 13385 (h) and (i) is issued to Magic Gas & Auto Service (hereinafter Permittee) based on a finding of violation of waste discharge requirements prescribed in Order No. R4-2002-0125 (NPDES No. CAG834001, CI No. 9042).

The Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds the following:

1. The Permittee operates the Magic Gas & Auto Service (facility) located at 1600 North Echo Park Avenue, Los Angeles, CA. The Permittee discharged up to 5,000 gallons per day (gpd) of treated wastewater into a nearby storm drain (Latitude 34° 08' 16", Longitude 118° 25' 46"). The wastewater was susceptible of containing methyl tertiary butyl ether (MTBE), and other pollutants which can degrade water quality and impact beneficial uses of water, and which are defined as wastes under the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.). The wastewater flows through the storm drain system into Ballona Creek, a navigable water of the United States.
2. On March 6, 2006, the Executive Officer determined that the waste discharges from the Permittee's facility met the conditions to be enrolled under Order No. R4-2002-0125 adopted by the Regional Board on July 11, 2002 and the facility was so enrolled effective on March 6, 2006. Order No. R4-2002-0125 serves as General National Pollutant Discharge Elimination System (NPDES) Permit No. CAG834001 (Waste Discharge Requirements for Discharges of Treated Groundwater and Other Wastewaters from Investigation and/or Cleanup of Petroleum Fuel-Contaminated Sites to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties).
3. At the time of purchase on April 27, 2006, Ms. Jung was informed that the soils beneath the subject property were contaminated with gasoline. Also, Ms. Jung was informed that The Reynolds Group (Consultants) planned to remediate the property, monitor the groundwater every quarter until the site was cleaned, and the consultants were in the

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process of obtaining a NPDES permit to discharge the treated groundwater from the remediation process. Furthermore, Ms. Jung was assigned all the rights to reimbursement arising from the cleanup of the site under the California Underground Storage Tank Cleanup Fund (SWRCB Cleanup Fund Claim No. 013791).

4. On May 19, 2006 and August 16, 2006 the Permittee violated its permit by discharging MTBE at concentrations of 14.7 µg/L and 13.4 µg/L, respectively.
5. On December 2, 2008, the Chief Deputy Executive Officer of the Regional Board issued the Permittee Offer to Participate in Expedited Payment Program (EPP) No. R4-2008-0160-M, which included a Notice of Violation notifying the Permittee of the two (2) effluent limitation violations that occurred on May 19, 2006 and August 16, 2006 that were subject to mandatory minimum penalties.
6. On January 23, 2009, the Regional Board staff met with Ms. Jan Jung and discussed the violations cited in the EPP.
7. On February 3, 2009, the Regional Board received Ms. Jung's response to EPP No. R4-2008-0160-M. In her correspondence, Ms. Jung alleged that the previous owner was responsible for the violations cited in Exhibit "A" - Notice of Violation, and submitted documents, which show that the property was acquired on April 27, 2006, but states that the previous owner is responsible for the penalties arising from the two daily maximum effluent limit violations that occurred on May 19, 2006 and August 18, 2006.
8. Although Ms. Jung, in her February 23, 2009 correspondence, states the previous owner is responsible for the penalties arising from the groundwater treatment operation at the property, the two daily maximum effluent limit violations occurred on May 19, 2006 and August 18, 2006, after Ms. Jung acquired ownership of the subject property.
9. Order No. R4-2002-0125 (Part F.1, page 12) includes the following effluent limitations for MTBE:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
MTBE	µg/L	5	---

µg/L = micrograms/liter

10. Any discharge containing pollutants violating the effluent limitations set in the waste discharge requirements is prohibited by CWC § 13376.
11. Among the provisions in the Permittee's waste discharge requirements are the requirements to implement a discharge monitoring program and to prepare and submit quarterly NPDES self-monitoring reports to the Regional Board pursuant to the authority of CWC § 13383.

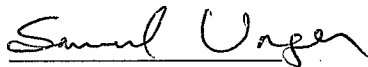
12. The two (2) violations include effluent limitation violations of MTBE. These violations include effluent limit exceedances for MTBE. The violations are identified in Exhibit "A" attached hereto and incorporated herein by reference.
13. CWC § 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to CWC § 13385(h)(2), a "serious violation" is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants.
14. Methyl tertiary butyl ether is a Group II pollutant.
15. CWC § 13385(i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the permittee violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.
16. The maximum amount of discretionary administrative civil liability assessable pursuant to CWC § 13385 is \$10,000 per day of violation plus \$10 times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

YOU ARE HEREBY GIVEN NOTICE THAT:

17. The Assistant Executive Officer proposes that the Permittee be assessed a mandatory minimum penalty in the amount of \$6,000 for the violations which occurred during May 2006 and August 2006 monitoring periods. Refer to Exhibit "A" for the calculation of the amount of mandatory minimum penalty.
18. The Permittee may waive the right to a hearing and pay the recommended administrative civil liability. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it to the Regional Board by 5:00 pm on November 20, 2009. If the hearing is waived, a check in the amount of \$6,000 (payable to the State Water Pollution Cleanup and Abatement Account) must be received by the Regional Board by 5:00 pm on November 20, 2009.
19. If the Regional Board does not receive a waiver and full payment of the recommended penalty by November 20, 2009, the Complaint will be heard before the Regional Board or Regional Board Hearing Panel pursuant to California Water Code §§ 13228.14 and 13323. The Notice of Public Hearing contains that date, time, location, and specific procedures of the scheduled hearing of this matter.
20. If a hearing on this matter is held, the Regional Board will consider whether to affirm, reject, or modify (i.e. increase the proposed civil liability above the mandatory minimum)

the proposed civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

21. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
22. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the Permittee's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
23. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code § 21000 et seq., in accordance with California Code of Regulations, title 14, § 15321.
24. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.



Samuel Unger, P. E.
Assistant Executive Officer
Los Angeles Regional Water Quality Control Board

October 30, 2009

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Magic Gas & Auto Service (hereinafter "Permittee") in connection with Administrative Civil Liability Complaint No. R4-2008-0160-M (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ ***Check here if the Permittee waives the hearing requirement and will pay the recommended liability.***

- a. I hereby waive any right the Permittee may have to a hearing before the Regional Water Board.
- b. I certify that the Permittee will remit payment for the proposed civil liability in the full amount of **\$6,000** by check that references "ACL Complaint No. R4-2008-0160-M." made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Board by **November 30, 2009** or the Regional Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Permittee to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

* See paragraph 13 for a definition of Pollutant Categories.